

INTHEUNITEDSTATESDISTRICTCOURT  
FORTHEEASTERNDISTRICTOFPENNSYLVANIA

HARRIETM.SCHWARTZ,	:	CIVILACTION
ExecutrixoftheEstateof	:	
EdwardSchwartz,Deceased,	:	NO.99-1832
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
WHITEEAGLELABORATORIES,INC.,	:	
t/aWHITEEAGLETOXICOLOGY :	:	
LABORATORIES,	:	
	:	
Defendant.	:	

**MEMORANDUM**

BUCKWALTER,J.

July1,1999

PresentlybeforetheCourtisthemotiontodismissbyPlaintiffHarrietM.

SchwartzofthecounterclaimassertedbyDefendantWhiteEagleLaboratories,Inc.Forthe reasonsdiscussedbelow,themotionisGRANTEDandthecounterclaimDISMISSEDwithout prejudiceforlackofsubjectmatterjurisdiction.

PlaintiffisaNewJerseyresidentandDefendantisaPennsylvaniacorporation.

See Compl.¶1.Plaintiff'shusband,thelateEdwardSchwartz,wasemployedbyDefendantup untilthetimeofhisdeath.See \_\_\_\_ id.¶4at2.Priortothattime,Defendantexecutedseveral judgmentnotesinvariousdenominationspayabletoMr.Schwartz. See id.¶¶5-8; id.(Exhibits A-Dthereto).Defendantallegedlyfailedtomakeanyinterestorprincipalpaymentsonthese notes, see id.¶9,althoughitapparentlyacknowledgedtheindebtednessincorrespondencesto

Mr. Schwartz, see id. ¶¶10-14; id. (Exhibits E-H thereto). Plaintiff seeks judgment for the outstanding principal and interest in the amount of \$173,128.01. See id. at 3.

Defendants subsequently answered the complaint, admitting that it had executed the judgment notes, but averred that they are invalid. See Ans. ¶¶7-10. Defendants also denied ever acknowledging the disputed indebtedness. See id. ¶¶11-16. After delineating its affirmative defenses, see id. ¶¶1-5 at 4-5, Defendant then alleged a counterclaim (which Defendant now concedes it mistakenly labelled a “cross-claim”), see id. ¶¶1-10 at 5-8. In the counterclaim, Defendant averred that Mr. Schwartz allegedly entered into consulting agreements with competitors of Defendant in violation of a deferred compensation agreement executed between himself and Defendant, thereby causing Defendant actual and consequential damages in the amount of approximately \$2,775.00. See id. ¶¶3-10 at 6-8.

Plaintiff now moves to dismiss the counterclaim on the ground that an arbitration clause in the deferred compensation agreement bars Defendant from interposing its counterclaim in this forum. See Pl.’s Mot. ¶¶1-4. Furthermore, Plaintiff argues that, since there is no reference in any of the judgment notes to the deferred compensation agreement or to arbitration in general, the basis of Plaintiff’s lawsuit against Defendant is not related to the deferred compensation agreement in any manner, rendering the counterclaim improper. See id. ¶¶5-7. In response, Defendant contends that the judgment notes were executed pursuant to the compensation provisions of the deferred compensation agreement and thus, the necessary relationship has been satisfied such that judicial economy warrants this Court retaining jurisdiction. See Def.’s Mem. at 2.

In reviewing a motion to dismiss, the Court accepts all well-pleaded allegations in the pleading as true and views them in the light most favorable to the non-moving party. See In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1420 (3d Cir. 1997). Pursuant to Fed. R. Civ. P. 13, Defendant may assert counterclaims against Plaintiff. However, the rule identifies two different types of counterclaims: compulsory and permissive. Compulsory counterclaims are those that, in relevant part, “arise[] out of the transaction or occurrence that is the subject matter of the opposing party’s claim.” Fed. R. Civ. P. 13(a). Permissive counterclaims are those that consist of “any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party’s claim.” Fed. R. Civ. P. 13(b).

While Defendant would have this Court believe that its counterclaim is somehow related to Plaintiff’s lawsuit, neither the allegations in the parties’ pleadings nor the deferred compensation agreement itself supports Defendant’s position. Thus, the Court cannot conclude that the counterclaim is of the compulsory variety. Instead, it is the permissive type that describes Defendant’s counterclaim precisely. And because the counterclaim is permissive, it must necessarily possess an independent basis for subject matter jurisdiction for this Court to exercise jurisdiction over it. By contrast, this Court may exercise jurisdiction over a compulsory counterclaim through the operation of 28 U.S.C. § 1367(a), so long as it does not also fall into the exception found in subsection (b).

Here, both parties are of diverse citizenship, but the counterclaim falls far too short of the \$75,000 amount-in-controversy requirement. See 28 U.S.C. § 1332(a). Accordingly, under its obligation to evaluate subject matter jurisdiction, the Court concludes that it is bereft of jurisdiction over the counterclaim and thus, will enter an order dismissing it without prejudice.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HARRIET M. SCHWARTZ,	:	CIVIL ACTION
Executrix of the Estate of	:	
Edward Schwartz, Deceased,	:	NO. 99-1832
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
WHITE EAGLE LABORATORIES, INC.,	:	
t/a WHITE EAGLE TOXICOLOGY	:	
LABORATORIES,	:	
	:	
Defendant.	:	

**ORDER**

AND NOW, this 1st day of July 1999, upon consideration of Plaintiff's Motion to Dismiss Cross-Claim[sic] (Docket No. 5) and Defendant's response thereto (Docket No. 7), it is hereby ORDERED that Plaintiff's motion is GRANTED, in accordance with the accompanying memorandum.

Defendant's counterclaim alleging breaches of the deferred compensation agreement executed between itself and Edward Schwartz is DISMISSED without prejudice for lack of subject matter jurisdiction.

BY THE COURT:

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RONALD L. BUCKWALTER, J.